IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9922 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MARUTI METALS

Versus

SALES TAX OFFICER (6) PART-2

Appearance:

1. Special Civil Application No. 9922 of 2004
MR SUDHIR M MEHTA for Petitioner No. 1
MR UR BHATT, AGP.for Respondent No. 1-2
DS AFF.NOT FILED (N) for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 26/11/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 Rule. Mr.U.R.Bhatt, learned Assistant Government Pleader appears and waives service of Rule on behalf of the respondents. By consent of the learned Advocates appearing for the respective parties the matter is taken up for final hearing.

2 The petitioner, a proprietary concern carrying on business of trading in Ferrous & Non-ferrous metals in the form of scrap has challenged notice dated 4/8/2004 issued under Section 59A of the Sales Tax Act,1969 (the Act) issued by the Sales Tax Officer (6) Class-II, Enforcement Division -III, Gandhinagar. It appears that the petitioner had loaded goods (copper scrap) in Truck No.GJ-1-VV-8500 for delivery to one M/s.B.R.Overseas, Delhi. The goods had been loaded at Bhavnagar and were delivered through M/s.Pawan Goods Freight for being loaded and onward delivery to Delhi. The said truck had been intercepted by respondent No.1 near Chiloda circle, Gandhinagar and the impugned show cause notice came to be issued.

3 The petitioner challenged the same and by way of interim relief an order came to be made on 18/8/2004 directing the respondent authorities to release the truck with goods on condition that the petitioner shall deposit a sum of Rs.1 lac before this Court. Admittedly the said amount had been deposited with the Registry of this Court on 18/8/2004.

4 Today when the matter is called out Mr.Sudhir M.Mehta, learned Advocate for the petitioner placed on record certificate dated 26/10/2004 issued by Sales Tax Officer, Division-I, Bhavnagar. The said certificate states that [i] there are no outstanding dues and, [ii] no returns are required to be filed as on date by the petitioner. The certificate further states that under the Central Sales Tax Act, 1956 in the quarter ending on 30/9/2004 an amount of tax being Rs.49,347/- on Bill No.18 dated 2/8/2004 raised in favour of M/s.B.R.Overseas, Delhi has been duly paid in State Bank of Saurashtra, Bhavnagar vide Challan No. 50 on 29/9/2004 and No Due Certificate has been issued in relation to the same.

5 Having heard the learned Advocate for the petitioner and Mr.U.R.Bhatt, learned Assistant Government Pleader on behalf of the respondent it is apparent that in light of the certificate placed on record the impugned

notice (Annexure-A) dated 4/8/2004 is required to be quashed and set aside as there are no outstanding dues and the goods which were carried in Truck No.GJ-1-VV-8500 are the goods which have borne the required tax. The goods and the truck have already been released by way of interim relief on 18/8/2004. Accordingly, notice dated 4/8/2004 (Annexure-A) is hereby quashed and set aside and interim relief stands confirmed.

6 The Registry is directed to refund the sum of Rs.1 lac deposited by the petitioner by Account Payee Cheque in the name of the petitioner. Rule made absolute. There shall be no order as to costs.

(D.A.Mehta, J)

(H.N.Devani, J)

m.m.bhatt